

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16525 of 2008

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Rita Rani, Wife of Late Ram Bilas Rabidas, Resident of Village and P.O.- Salarpur,
Police Station – Daniyawan, District – Patna, presently resides at Road No. 01, East
Indira Nagar, P.O. – Lohiya Nagar, P.S. – Kankarbagh, District – Patna.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Commissioner-cum-Principal Secretary, Secondary Education, Bihar,
Patna.
3. The Director Administration-cum-Deputy Secretary, Secondary, Primary and
Adult Education, Bihar, Patna.

.... Respondents

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Appearance :

For the Petitioner	: Mr. Nand Lal Kr.Singh, Advocate. Ms. Madhuri Lata, Advocate. Mr. Rajesh Kr.Singh, Advocate. Mr. Manish Kumar, Advocate.
For the Respondents	: Mr. Gyan Shankar. Mr. Asit Kumar Jha.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 14-02-2017

Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The petitioner seeks quashing of the order as contained in Memo No. 727 dated 20.08.2002 (Annexure-1) by which the petitioner was dismissed from service. The petitioner further prayed by filing interlocutory application to quash Memo No. 938 dated 30.09.2008 (Annexure-11) by which the appeal of the petitioner was dismissed confirming the order of his termination as contained in Annexure-1.

3. During pendency of this writ petition Ram Bilash



Ravidas died and his wife Rita Rani was substituted vide order dated 11.12.2013 in place of Ram Bilash Ravidas.

4. The facts in short and also relevant for the disposal of this writ petition are that the petitioner Ram Bilash Ravidas was appointed in Bihar Education Service. While the petitioner was posted as Regional Deputy Director of Education, Dumka vide order as contained in Memo No. 333 dated 04.08.1989, the petitioner was put under suspension for the acts done by him in the year 1991 to 1993. When he was posted as District Education Officer, Samstipur. A departmental proceeding was also initiated against him. Charges were served upon the petitioner on 08.02.2000.

5. Shri Avinash Kumar the Managing Director of Bihar State Text Book Publication Corporation was appointed as enquiry officer and the District Education Officer, Samastipur was appointed as presenting officer. The enquiry officer after concluding the enquiry submitted his report. Second show cause notice vide Letter No. 517 dated 05.07.2001 was given to the petitioner and the petitioner filed his show cause on 24.07.2001 Annexure-5.

6. The further case of the petitioner is that the petitioner moved this Court in CWJC No. 4883 of 2002 for revocation of his suspension as the departmental proceeding was not concluded within two years. In view of the letter no. 8537 dated 6th July, 1981 issued



under the signature of the then Chief Secretary the departmental proceeding has to be concluded within two years and if the department fails to conclude the departmental enquiry, the suspension contemplating the departmental enquiry shall have to be revoked. This Court vide order dated 26.06.2002, relying on the aforesaid circulars quashed the order putting the petitioner under suspension contemplating departmental enquiry and directed the authority to dispose of the departmental proceeding in accordance with law.

7. It is further stated that the petitioner filed representation before the authority, but the suspension of the petitioner was not revoked and the disciplinary authority vide order as contained in Memo No. 727 dated 20.08.2002 issued under the signature of Director, Administrative-cum-Deputy Secretary, Department of Secondary, Primary and Adult Education (Annexure-1) dismissed the petitioner, thereafter the petitioner moved this Court and assailed the order.

8. The State filed counter affidavit stating in sum and substance that the petitioner during his tenure as District Education Officer, Samastipur in the year 1991-93, illegally appointed 27 persons on the post of clerks and peons in violation of government rules and the circulars in Nationalized School. Initially, the Director,



Secondary Education was appointed as enquiry officer vide Resolution No. 112 dated 14.02.2000, but since the enquiry conducting officer was transferred vide Resolution No. 429 dated 14.06.2000 the Managing Director, Bihar State Text Book Publication Corporation was appointed as enquiry officer and the enquiry officer held the enquiry in accordance with law after giving full opportunity of hearing to the petitioner and submitted his report finding the petitioner guilty. The petitioner was given second show cause and the petitioner also replied to the notice of the second show cause but did not produce any material against the report of the enquiry conducting officer. The consent of BPSC was also sought for and the BPSC also recommended for action against the petitioner. Accordingly, the service of the petitioner was terminated. The petitioner preferred appeal and the same was also dismissed. It is further stated that the petitioner after his dismissal from service moved this Court in CWJC No. 2315 of 2003. The petitioner withdrew the writ petition without any leave to file afresh writ petition after pursuing the alternative remedy. The petitioner concealed the relevant facts from this Court and did not mention the fact that the order passed in CWJC No. 4883 of 2002 was set aside by a Division Bench in LPA and against the order of dismissal the petitioner earlier withdraw the CWJC No. 2315 of 2003 on



17.02.2004.

9. Learned counsel for the petitioner submits that the order dismissing the petitioner from service is bad and violative of principal of natural justice. The document relied upon by the enquiry officer was not at all given to the petitioner. 17.08.2000, was the date fixed for hearing the departmental proceeding, but without conclusion of hearing, the enquiry officer submitted its report on 10.11.2000. The petitioner further submits that the petitioner in his reply to the second show cause has stated that the petitioner did not make any illegal appointment. The documents submitted by the presenting officer were not supplied to the petitioner and notice of show cause is not clear. The order impugned is non-speaking and based on no evidence. Learned counsel for the petitioner placed his reliance on the judgment reported in *AIR 1969 SC page 1294* and *PLJR 2007 (1) page 146* and *1999 (2) SCC Page 10*.

10. Learned counsel for the respondents on the contrary submits that there is no procedural irregularity committed during the departmental proceeding. The memorandum of charge was served on the petitioner along with the documents and circulars which were violated by the petitioner in making appointment of 27 persons on Class-3 and Class-4 posts. The enquiry officer discussed and allowed the petitioner to produce documents to show that the appointments



made by him on different posts of Class-3 and Class-4 are legal but the petitioner did not show any paper nor cited any example for non-submission of documents with regard to illegal appointment in his reply to the second show cause.

11. The petitioner has not been able to show that any prejudice was caused to him due to non-supply of any documents and the same was considered by the enquiry officer in his report. Therefore, no prejudice is caused to the petitioner.

12. Learned counsel for the State placed his reliance on the judgment reported in *2011 (2) SCC Page 316* and *SCC (2) 2015 Page 610* and submitted that against the finding of the departmental proceeding this Court in Articles 226 and 227 of the Constitution of India has got very limited scope to interfere and only in case of perversity, the Court can interfere, but there is no such case that the finding is based on no evidence and the order is perverse.

13. Learned counsel for the State further submitted that the petitioner concealed the facts that the order passed in CWJC No. 4883 of 2002 was set aside by the Division Bench in LPA and the petitioner after his dismissal from service filed CWJC No. 2315 of 2003 and the petitioner himself withdrew the writ petition without taking leave of the Court to prefer the writ petition after the order of the appellate authority. Learned counsel for the State placed his



reliance on the judgment reported in *AIR 1987 SC Page 88 and 2008 (12) SCC 481 in KD Sharma vs. Steel Authority of India and Others.*

14. On the basis of submissions of the parties, the first question arises for consideration as to whether there was any procedural illegality in conducting the departmental proceeding and sufficient opportunity was not given to the petitioner for his hearing? Admittedly, the petitioner was posted as District Education Officer, Samastipur in the year 1991-93, he made appointment of 27 persons on the post of clerk and peon in different newly taken over schools against the rules and circulars and procedure. According to the circular no. 16440 dated 03.12.1980 and the Government Notification No. 398 dated 09.06.2003 the appointment on the post of Class-3 in different government taken over schools were to be made by a committee duly constituted at the district level, but the petitioner did not follow the aforesaid directions as contained in Circular No. 16440 dated 03.12.1980 and Notification No. 398 dated 09.06.2003. According to the circular No. 16440 dated 03.12.1980 of Personnel and Administrative Department the appointments were made on Class-4 posts from a panel prepared by the District Magistrate, but the petitioner did not follow the circulars and he according to his own will and to satisfy his interests, made appointment of 15 peons. According to provision of Education



Department Letter No. 3435 dated 13.06.1974 the appointments of Class-3 and Class-4 in the regional office of Education Department was vested with the respective Regional Deputy Director and the Regional Deputy Director was only competent person to make appointment in view of directions and circulars of the Personnel and Administration Reforms Department, Government of Bihar, but the petitioner violated the circulars and directions and appointed 10 persons in different divisional office of the department.

15. The petitioner was further charged that altogether he illegally appointed 27 persons and for that the different illegally appointees withdrew more than Rs. 50 lacs and thereby caused loss to the government, it appears also from the charge memo given to the petitioner before initiation of departmental proceeding. From the report of the enquiry officer, as contained in Annexure-4, it appears that the petitioner Ram Bilash Ravidas and the presenting officer were heard at length and there was discussion about the legality and illegality committed by the petitioner with regard to each and every appointment made by the petitioner and only thereafter the enquiry officer submitted his report on 10.11.2000 recommending for actions to be taken against the petitioner. The disciplinary authority after having received the enquiry report asked second show cause from the petitioner on 05.07.2001. The copy of the enquiry report as



contained in Letter No. 517 was also served on the petitioner.

16. The petitioner in his second show cause has only reiterated the same facts, which were raised during the time of hearing before the enquiry officer and the enquiry officer considered all the submissions and the points raised by the petitioner only thereafter, he submitted the report finding the petitioner guilty for making illegal appointment without following the procedure of law. Even during course of arguments, learned counsel for the petitioner has not been able to show that any illegality was committed or any relevant paper was not supplied to the petitioner causing any prejudice.

17. On perusal of the aforesaid facts, I find that the judgment on which learned counsel for the petitioner placed his reliance does not help the case of the petitioner in any way as no illegality or procedural irregularity was committed in the entire departmental proceeding. In the writ jurisdiction this Court has got limited power to interfere in the findings of the disciplinary authority only when there is perversity of finding or finding is based on no evidence. In the case of *Union of India (UOI) Vs. P. Gunasekaran* reported in *SCC (2015) 2 at page 610* in paragraph 13 of the aforesaid judgment held as follows:

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:
(i) reappreciate the evidence;



(ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
(iii) go into the adequacy of the evidence;
(iv) go into the reliability of the evidence;
(v) interfere, if there be some legal evidence on which findings can be based.
(vi) correct the error of fact however grave it may appear to be;
(vii) go into the proportionality of punishment unless it shocks its conscience.

18. So far as the second contention of the petitioner learned counsel for the State submitted that the petitioner has concealed the fact that he earlier moved this Court against the order of his dismissal in CWJC No. 2315 of 2003 and the aforesaid writ petition was withdrawn without seeking any leave to file another writ petition and therefore the present writ petition is barred. This contention finds support from the law laid in the case of Sarguja Transport Service v. S.T.A. Tribunal Gwalior reported in 1987 (1) S.C. in paragraph 5 and 9 as follows:

5. In this case we are called upon to consider the effect of the withdrawal of the writ petition filed under Articles [226/227](#) of the Constitution of India without the permission of the High Court to file a fresh petition. The provisions of the CPC, 1908 (hereinafter referred to as 'the Code') are not in terms applicable to the writ proceedings although the procedure prescribed therein as far as it can be made applicable is followed by the High Court in disposing of the writ petitions. Rule 1 of Order XXIII of the Code provides for the withdrawal of a suit and the consequences of such withdrawal. Prior to its amendment by Act 104 of 1976, Rule 1 of Order XXIII of the Code provided for two kinds of withdrawal of a suit, namely, (i) absolute withdrawal, and (ii) withdrawal with the permission of the Court to institute a fresh suit on the same cause of action. The first category of withdrawal was governed by Sub-rule (1) thereof, as it stood then, which provided that at any time after the institution of a suit the plaintiff might, as against all or any of the defendants 'withdraw' his suit or abandon a part of his claim. The second category was governed by Sub-rule (2) thereof which provided that where the Court was satisfied (a) that a suit must



fail by reason of some formal defect, or (b) that there were sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it might, on such terms as it thought fit, grant the plaintiff permission to withdraw from such suit or abandon a part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim. Sub-rule (3) of the former Rule 1 of Order XXIII of the Code provided that where the plaintiff withdrew from a suit or abandoned a part of a claim without the permission referred to in Sub-rule (2) he would be liable to such costs as the Court might award and would be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. Since it was considered that the use of the word 'withdrawal' in relation to both the categories of withdrawals led to confusion, the rule was amended to avoid such confusion. The relevant part of Rule 1 of Order XXIII of the Code now reads thus:

Rule 1. Withdrawal of suit or abandonment of part of claim—(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

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(3) Where the Court is satisfied—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff—

(a) abandons any suit or part of claim under Sub-rule(1),or

(b) withdraws from a suit or part of a claim without the permission referred to in Sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

9. The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Art. 226 of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Dayao's case (supra) is of no assistance. But we are



of the view that the principle underlying R. 1 of O. XXIII of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art. 32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Art. 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that a fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition. We, however, make it clear that whatever we have stated in this order may not be considered as being applicable to a writ petition involving the personal liberty of an individual in which the petitioner prays for the issue of a writ in the nature of habeas corpus or seeks to enforce the fundamental right guaranteed under Art. 21 of the Constitution since such a case stands on a different footing altogether. We, however, leave this question open.

19. Having considered facts aforesaid and discussions made above I do not find any merit in this writ petition and accordingly the same is dismissed. No order as to cost.

(Prabhat Kumar Jha, J.)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.03.2017
Transmission Date	

